

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:

RICHARD M. OSBORNE, SR.
Debtor.

CASE NO. 17-17361

CHAPTER 7

JUDGE ARTHUR I. HARRIS

**JOINT MOTION OF RICHARD M. OSBORNE, CITIZENS BANK, N.A.,
AND CHAPTER 7 TRUSTEE, TO MODIFY ORDER GRANTING, IN PART,
MOTION OF RICHARD M. OSBORNE TO SELL A PARCEL OF REAL PROPERTY
LOCATED AT PLAZA BOULEVARD, MENTOR, OH FREE OF ANY INTEREST OF
ANY ENTITY OTHER THAN THE ESTATE**

Richard M. Osborne (“Debtor”), Citizens Bank, N.A. fka RBS Citizens, N.A. dba Charter One (“Citizens”), and Kari B. Coniglio (“Trustee” and together with the Debtor and Citizens, the “Movants”) hereby move (this “Joint Motion”) this Court for an order pursuant to 11 U.S.C. §§ 105 and 363(b) and (f), modifying the *Order Granting, In Part, Motion of Richard M. Osborne to Sell a Parcel of Real Property Located at Plaza Boulevard, Mentor, OH Free of Any Interest of Any Entity Other Than the Estate* (the “Original Order”) [Doc. 463] in the form of the Agreed Order attached hereto as **Exhibit 1** (the “Agreed Order”).

In support of this Joint Motion, the Movants respectfully state as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the Debtor’s case and this Joint Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Sections 105(a) and 363(b) and (f) of the Code provide the bases for the relief sought in this Joint Motion.

BACKGROUND

2. On December 17, 2017 (the “Petition Date”), the Debtor filed his voluntary petition

for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtor continued as debtor-in-possession of his Chapter 11 case through July 3, 2019 (the “Conversion Date”), when his case was converted to one under Chapter 7 of the Bankruptcy Code and the Trustee was appointed as Chapter 7 Trustee of his estate.

3. The Debtor is the title holder of a vacant parcel of real estate located at Plaza Boulevard, Mentor, Ohio (the “Property”), as more particularly described in the Purchase Agreement attached as Exhibit A to the Original Order.

4. On June 10, 2019, this Court entered the Original Order granting authority for the Debtor to sell the Property to Signature Health, Inc. (“Buyer”) subject to the terms and conditions set forth in the Original Order.

5. The sale of the Property to Buyer did not close prior to the Conversion Date. However, the Buyer and the Movants wish to consummate the sale.

6. The Trustee was unwilling to take action to facilitate the closing absent a benefit to the Debtor’s estate. Accordingly, Citizens has agreed to modify the Original Order to confirm that 12% of the Net Proceeds otherwise payable to Citizens shall be paid to the Trustee on behalf of the Debtor’s estate.

7. The Movants and the Buyer have otherwise agreed to consummate the sale of the Property subject to the same terms and conditions set forth in the Original Order.

8. The amendments to the Original Order do not affect any party other than those who are signatories to the Agreed Order.

RELIEF REQUESTED

9. As explained above, the sale of the Property has already been approved by this Court subject to the Original Order; however, the Trustee requested a benefit to the Debtor’s estate

for the Trustee to take action to facilitate closure of the sale.

10. The proposed edits to the Original Order do not affect any party other than the Movants. Accordingly, this Court has authority under Section 105(a) to enter the Agreed Order to facility the closing of the sale of the Property.

WHEREFORE, the Movants respectfully request that this Court enter the Agreed Order modifying the Original Order and enter such other and further relief in favor of the Movants as is just and equitable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 13, 2020, a copy of the foregoing *Joint Motion of Richard M. Osborne, Citizens Bank, N.A., and Chapter 7 Trustee, to Modify Order Granting, In Part, Motion of Richard M. Osborne to Sell a Parcel of Real Property Located at Plaza Boulevard, Mentor, OH Free of Any Interest of Any Entity Other Than the Estat* was served via the Court's Electronic Case Filing System on the following who are listed on the Court's Electronic Mail Notice List:

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**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:

RICHARD M. OSBORNE, SR.
Debtor.

CASE No. 17-17361

CHAPTER 7

JUDGE ARTHUR I. HARRIS

**AGREED ORDER GRANTING JOINT MOTION OF RICHARD M. OSBORNE,
CITIZENS BANK, N.A., AND CHAPTER 7 TRUSTEE, TO MODIFY ORDER
GRANTING, IN PART, MOTION OF RICHARD M. OSBORNE TO SELL A PARCEL
OF REAL PROPERTY LOCATED AT PLAZA BOULEVARD, MENTOR, OH FREE OF
ANY INTEREST OF ANY ENTITY OTHER THAN THE ESTATE**

This matter is before the Court on the Joint Motion (the “Joint Motion”) [Doc. ____] of Richard M. Osborne (“Debtor”), Citizens Bank, N.A. fka RBS Citizens, N.A. dba Charter One (“Citizens”), and Kari B. Coniglio (“Trustee” and together with the Debtor and Citizens, the “Movants”) for an order pursuant to 11 U.S.C. §§ 105 and 363(b) and (f) modifying the *Order Granting, In Part, Motion of Richard M. Osborne to Sell a Parcel of Real Property Located at Plaza Boulevard, Mentor, OH Free of Any Interest of Any Entity Other Than the Estate* (the “Original Order”) [Doc. 463]. A hearing on the Joint Motion was scheduled for March 24, 2020,

commencing at 10:00 a.m., however, no party in interest timely objected to the relief requested in the Joint Motion or appeared to oppose the Joint Motion at the hearing thereon. Accordingly, upon the agreement of the Movants, the Court finds and orders as follows:

THE COURT FINDS THAT:

A. The Joint Motion and Notice thereof were duly served according to the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, or such service has been waived by the entities that are signatory to this order.

B. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O).

C. On December 17, 2017 (the “Petition Date”), the Debtor filed his voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtor continued as debtor-in-possession in his Chapter 11 case through July 3, 2019 (the “Conversion Date”), when his case was converted to one under Chapter 7 of the Bankruptcy Code and the Trustee was appointed as Chapter 7 Trustee of his estate.

D. The Debtor is the title holder of a vacant parcel of real estate located at Plaza Boulevard, Mentor, Ohio (the “Property”), as more particularly described in the Purchase Agreement attached as Exhibit A to the Original Order.

E. On June 10, 2019, this Court entered the Original Order granting authority for the Debtor to sell the Property to Signature Health, Inc. (“Buyer”) subject to the terms and conditions set forth in the Original Order.

F. The sale of the Property to Buyer did not close prior to the Conversion Date. However, the Buyer and the Movants wish to consummate the sale.

G. Citizens has agreed to modify the Original Order to confirm that 12% of the Net Proceeds otherwise payable to Citizens shall be paid to the Trustee on behalf of the Debtor's estate. THEREFORE IT IS ORDERED THAT:

1. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Original Order;

2. The Trustee is hereby authorized to sell the Property, free and clear of any interest of any entity other than the estate subject to the Original Order, except as expressly modified herein;

3. The escrow agent, upon the closing of the Property sale, is hereby authorized and directed to disburse from the Gross Sale Proceeds an amount sufficient to pay the closing costs and the Real Estate Taxes to those parties entitled to receive them, and next to pay 12% of the remaining Net Proceeds to the Trustee (via wire transfer or such method as the Trustee may direct pursuant to instructions to be provided to the escrow agent prior to the closing), and finally with the remaining Net Proceeds to be paid to Citizens (via wire transfer or such other method as Citizens may direct pursuant to instructions to be provided to the escrow agent prior to the closing).

4. The Property shall be transferred to the Buyer free and clear of all liens, interests, encumbrances, mortgages, pledges, security interests, liabilities, and claims (collectively, the "Claims"), with all such Claims attaching to the proceeds of the sale with the same validity, enforceability and priority as such Claims had in the Property on the Conversion Date.

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Prepared and Agreed to by:

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